



# GOVERNANCE AND POLICY COMMITTEE

## TRUSTEE CODE OF CONDUCT AND TRUSTEE HONORARIUM

*Now you have observed my teaching, my conduct, my aim in life, my faith, my patience, my love, my steadfastness - 2 Timothy 3:10*

Drafted	Meeting Date
October 24, 2024	November 6, 2024
Aird & Berlis LLP, Interim Integrity Commissioner	

### RECOMMENDATION REPORT

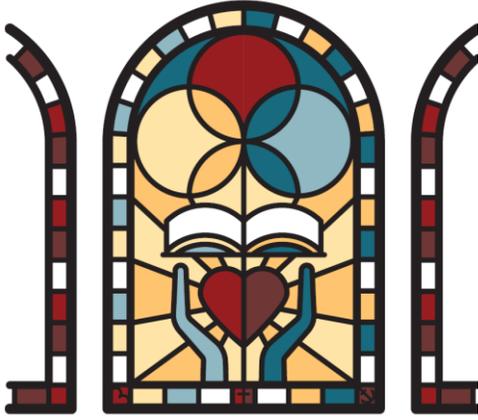
**Vision:** *IN GOD'S IMAGE: Growing in Knowledge, with Justice and Hope.*

**Mission:** *Nurturing the faith development and academic excellence of our Catholic learning community through the love of God, neighbour, and self.*



MULTI-YEAR STRATEGIC PLAN  
2022 - 2025

*IN GOD'S IMAGE: Growing in Knowledge, with Justice and Hope*



- Brendan Browne  
Director of Education
  
- Adrian Della Mora  
Associate Director of Academic Affairs & Chief Operating Officer
  
- Derek Boyce  
Associate Director of Corporate Services and Chief Commercial Officer
  
- Ryan Putnam  
Chief Financial Officer and Treasurer

## A. EXECUTIVE SUMMARY

This Report summarises proposed revisions to the Trustee Code of Conduct (Appendix A Tracked and Appendix B Clean) and applicable appendices, Complaint Protocol (Appendix C tracked and Appendix D clean, Commentary on Trustee Code of Conduct (Appendix E tracked and Appendix F clean) and Guide to Trustee Code of Conduct Procedure (Appendix G) made by Aird & Berlis LLP, the Interim Integrity Commissioner to the Toronto Catholic District School Board (“**TCDSB**”), to reflect legislative changes coming into force on January 1, 2025 under the *Education Act*, RSO 1990, c E.2 (the “**Education Act**”) and Ontario Regulation 306/24.

The report also proposes an update to the Trustee Honorarium Policy (Appendix H tracked and Appendix I clean) to reflect legislative changes coming into force on January 1, 2025 under the *Education Act*, RSO 1990, c E.2 (the “**Education Act**”), Ontario Regulation 306/24, and to reflect the current Board policy template.

Cumulative time to date to undertake proposed revisions to Code of Conduct and related materials: approximately 30 hours.

## B. PURPOSE

Schedule 2, s. 24 of the *Better Schools and Student Outcomes Act, 2023* amends sections 218.2 and 218.3 of the *Education Act*. Along with Ontario Regulation 306/24, this legislation requires all school boards in Ontario to adopt codes of conduct, sets out the procedural requirements for bringing an allegation of a breach of the code of conduct to the applicable board of trustees and provides for an appeal mechanism of any determination or sanction imposed under the new accountability regime. Notably, under the legislative changes, the integrity commissioner is provided with the direct authority to impose sanctions (not the board of trustees itself) and there is an appeal mechanism whereby a panel of three integrity commissioners may hear an appeal of any determination by an integrity commissioner.

The legislative amendments highlighted above and in this Report will necessitate changes to the TCDSB’s Trustee Code of Conduct (the “**Code**”) and accompanying appendices, specifically, the Complaint Protocol (Appendices C and D) to the Trustee Code of Conduct (the “**Complaint Protocol**”).

As currently structured, the TCDSB’s Code and Complaint Protocol permit any “Eligible Complainant” to submit a code of conduct complaint to the Integrity Commissioner. The Integrity Commissioner then undertakes an inquiry into the complaint and makes a determination. Where the complaint is summarily dismissed, the Trustee whose conduct is in issue may not be provided notice of the complaint.

Where the complaint is sustained, the Integrity Commissioner is required to report its findings and recommended sanctions to the Board of Trustees at a meeting of the Board. In turn, the Board of Trustees is required to vote on the imposition of any sanction on a member.

There is currently no formal appeal mechanism in the *Education Act*, although a member may seek judicial review of a decision of Board of Trustees.

Pursuant to the legislative amendments coming into effect on January 1, 2025, the current regime set out in the TCDSB's Code and Complaint Protocol must be significantly amended in order to comply with amendments to the *Education Act*. These changes are highlighted below and have been inserted into the revised Code, Complaint Protocol and accompanying appendices provided in tandem with this Report.

## **C. BACKGROUND**

The TCDSB's Trustee Code of Conduct was previously amended effective August 22, 2024 to bring it into compliance with Ontario Regulation 312/24. Ontario Regulation 312/24 required the inclusion of various provisions with respect to use of TCDSB resources, the use of confidential information, gifts and other additional content in the Code.

Effective January 1, 2025, amendments to the *Education Act* and as further prescribed by Ontario Regulation 306/24 will require all school boards to adopt codes of conduct with certain minimum procedural requirements. There are three (3) major areas of change under the amendments: (1) the nature of the notice of an alleged breach of the code; (2) the integrity commissioner's ability to impose sanctions; and (3) the appeal mechanism whereby the board of trustees or individual trustee whose conduct was alleged to have breached the applicable code of conduct may appeal the integrity commissioner's determination and/or sanctions.

A detailed overview of these three areas is set out below in the analysis section of this Report.

Aird & Berlis LLP, as Interim Integrity Commissioner of the TCDSB, was asked to assist with revisions to the Code, Complaint Protocol and accompanying appendices to align these materials with the legislative amendments coming into force on January 1, 2025. As such, Aird & Berlis LLP has provided draft suggested revisions to the Code, Complaint Protocol and accompanying appendices solely to ensure that these comply with amendments to the *Education Act* and Ontario Regulation 306/24. We

have, therefore, not revised or amended other aspects of the Code of Conduct or accompanying appendices.

## D. ANALYSIS

### 1. Notice of Breach

Under the new legislative amendments, a member of a board who has reasonable grounds to believe that another member has breached the board's code of conduct may notify the board of the alleged conduct (the “**Notice**”). The Notice shall comply with prescribed requirements and, in the event the matter is not resolved within twenty (20) business days after the provision of the Notice, the matter is to be referred to the duly-appointed integrity commissioner under the *Education Act*.

We note that the current TCDSB Code and Complaint Protocol permit an “Eligible Complainant” (that is, a trustee, student, staff member or service provider of the TCDSB, a Roman Catholic elector, an Eastern Rite Catholic, a representative of an organization demonstrably interested in a TCDSB matter or any such other person demonstrably interested in a TCDSB matter) to bring a complaint forward.

Due to the nature of the requirements set out in the *Education Act* amendments, the Complaint Protocol and accompanying appendices remove the use of “Eligible Complainant” and instead only permit a Trustee to bring any notice of alleged breach to the Board.

Given that only a Trustee may bring forward notice of an alleged breach, we likewise recommend the deletion of Appendix G: Guide to Trustee Code of Conduct Procedure as this was, presumably, intended for a layperson audience under the regime that permitted an “Eligible Complainant” to bring forward a complaint.

### 2. Integrity Commissioner's Determination and Imposition of Sanctions

Pursuant to the amendments, the integrity commissioner may directly impose one or more of the following sanctions in the event that it determines a trustee has contravened a code of conduct:

- i. Censure of the member.
- ii. Requiring the board to reduce the member's honorarium by an amount not exceeding the prescribed amount, requiring the member to return any excess already paid to the member and authorizing the board to recover the excess from the member.
- iii. Barring the member from attending all or part of one or more meetings of the board or one or more meetings of a committee of

the board, for the period of time specified by the integrity commissioner up to a maximum of 90 days or the balance of the member's term of office, whichever is less.

- iv. Barring the member from sitting on one or more committees of the board, for the period of time specified by the integrity commissioner, up to a maximum of 90 days or the balance of the member's term of office, whichever is less.
- v. Barring the member from becoming the chair or vice-chair of the board or of any committee of the board, or removing the member from any of those positions.
- vi. Barring the member from exercising the privileges of a board member or acting as a board representative, or removing the member from a position the member holds as a board representative.
- vii. Subject to any other limits set out in paragraphs 1 to 6, any other sanction that, in the opinion of the integrity commissioner, is reasonable and appropriate in the circumstances.
- viii. Subject to any other limits set out in paragraphs 1 to 6, any other sanction that, in the opinion of the integrity commissioner, would promote compliance with the board's code of conduct.

Unlike the TCDSB's current regime, these changes will mean that the board of trustees will no longer have the power to determine and impose sanctions against a trustee in the event the integrity commissioner determines that a trustee has contravened the code of conduct. The integrity commissioner will no longer be *recommending* sanctions but will instead be imposing them directly.

### 3. Appeals

The legislative changes permit a trustee whose conduct has been determined by the integrity commissioner to contravene the code as well as the board of trustees to appeal the integrity commissioner's decision and/or sanctions. A notice of appeal must be provided within fifteen (15) business days of receiving written notice of the integrity commissioner's determination.

The appeal shall be heard of a panel of three (3) integrity commissioners, not including the original integrity commissioner who made the decision under review.

As a final area of note, the Code of Conduct contained a regulation with respect to "voting requirements" which required a 2/3 majority on any vote with respect to the imposition of a sanction. As you will note in the draft proposed revisions, we have

removed this provision in its entirety given that the Board will no longer have the ability to impose a sanction on a Trustee.

## **E. METRICS AND ACCOUNTABILITY**

The government has indicated that various areas of the code of conduct complaint and appeal process may be amended by further regulation. We recommend that any further legislative changes be monitored to evaluate whether further revisions to the Code, Complaint Protocol and applicable appendices are required.

As well, given the significant overhaul of the complaint process, the Board is now required to update its code of conduct by May 15, 2027 and then every subsequent four (4) years.

## **F. STAFF RECOMMENDATION**

We recommend that the GAP approve the revisions to the Trustee Code of Conduct (Appendix A tracked and Appendix B clean), Complaint Protocol (Appendix C tracked and Appendix D clean), Commentary on Trustee Code of Conduct (Appendix E Tracked and Appendix F) and Honorarium Policy (Appendix H Tracked and Appendix I clean), subject to the following further changes:

- No “Voting Requirement” provision be included in the Code of Conduct for the reasons set out above; and
- Guide to Trustee Code of Conduct (Appendix G) be rescinded.